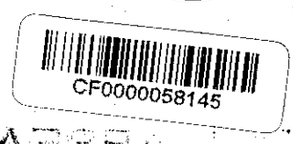
Cri A 903/94 (2)

XII-188/(Jail)
C.J.P.R.—5,000-9-81



APPEAL OF PRISONER

No. 145. Name [illegible]

Father's name [illegible] Residence [illegible] Age 19 Yrs.

Sentenced to [illegible] on 24/3/94.

Under section 302 IPC & 201 IPC by [illegible]

it is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement X

2 Date of which copy received 24/3/94.

3 Date on which Appeal sent 8/4/94

4 Whether the prisoner wishes to be represented or not – Yes/No. YES.

RECD.

No. 145. Dt. 24/3/94 Name [illegible]

Continued in Sub. Jail Tashpeur nagar.

No. 324. dated 8/4/94 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE Raigarh. (M.P.)

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

Superintendent, Central/District/Sub-Jail

Date of receipt in C. J. M.'S Office 12.5.94

Date of receipt of record to accompany

Memo of Appeal of the Appeliate Court.

No. 2/CJM/Raigarh Dated 11.5.94 198

Forwarded to the Sub Jail to CJ/Raigarh

C.J.Magistrate

Date of receipt in Appliate Court 11.5.94

(P.T.O.)

XI-HC-22

(15)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A.903/94 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

20-2-2006

Mr. Abhijeet Sarkar, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Akhil Mishra, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

This appeal is directed against the judgment of conviction and order of sentence dated 24-3-1994 passed by the Additional Sessions Judge, Jashpurnagar, in Sessions Trial No.83/93, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

Case of the prosecution, in brief, is that Seetaram (PW-1) lodged the report (Ex.P-1) in Police Station: Farsabahaar on 13-7-1992 at about 7.30 in the evening to the effect that on that day at about 12 Noon, the accused came to him and made extra judicial confession that he has assaulted his brother Sonsai Khadiya (since deceased) with axe on his neck, on account of old animosity. Thereafter, the accused again made extra judicial confession at 12.30 p.m. in the presence of Panch Baig Sunder &

[पीछे देखिये

(16)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A. 903/94 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Patel Dhaniram in which he stated that his brother used to quarrel with him, that day he could not tolerate, therefore, he assaulted his brother thrice. Thereafter, they went to the house of the accused and saw that the body of Sonsai was lying on the cot.

Receiving this report, the Station House Officer, Police Station: Farsabahaar, registered Crime No.73/92, left for the scene of occurrence and prepared Panchnama (Ex.P-2) of the dead body of Sonsai. He took into possession blood stained soil and plain soil from the place of occurrence under Ex.P-3. He also took into possession the weapon of offence axe and one lungi under Ex.P-4. Patwari prepared the site plan (Ex.P-5). The body of Sonsai was sent for post-mortem to the Add. Primary Health Centre, Tapkara, where Dr. B.C. Paikra (PW-7) conducted post-mortem and prepared the post-mortem report (Ex.P-7). The weapon of offence, axe, was sent to Dr. B.C. Paikra for giving his opinion and he gave his opinion (Ex.P-8) that the injuries which were found on the body of Sonsai could be caused by the axe in question.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, Jashpurnagar, who in turn committed the case to the Sessions Judge, Raigarh, from where learned Additional Sessions Judge, Jashpurnagar, received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined ten witnesses. Statement of the accused was recorded under

[पीछे देखिये

(17)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A.903/94 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he is innocent and he has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused, convicted and sentenced the accused as mentioned in para 1 of this judgment.

We have heard Mr. Abhijeet Sarkar, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. Akhil Mishra, learned Panel Lawyer on behalf of the State/respondent.

The homicidal death of Sonsai is not in dispute.

As far as involvement of the accused/appellant in the crime in question is concerned, there is no direct evidence and the case rests on the circumstantial evidence that the accused made extra judicial confession before Seetaram (PW-1), Baig Sunder (PW-2) & Dhaniram (PW-5). The weapon of offence was recovered at the instance of the accused. It is settled law that conviction can be based on extra judicial confession, provided same is voluntary and true.

Seetaram (PW-1) has stated in his evidence that on the fateful day at about 12 noon, he was standing on the way and talking to Baig Sunder, at that time, the accused came and informed that he has assaulted his elder brother with axe and clothes of the accused were stained with blood. Thereafter, he along with the Panch went to the house of Sonsai and saw

[पीछे देखिये

आदेश पत्रक

यामला क्रमांक G.A.903/94 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that the body of Sonsai was lying on the cot. The matter was reported to Police Station: Farsabahaar.

The above evidence of Seetaram is corroborated by the evidence of Baig Sunder (PW-2) and Dhaniram (PW-5). All these witnesses are independent witnesses. In their cross-examination, the prosecution has not been able to elicit anything whereby it can be inferred that these witnesses have deposed against the accused on account of animosity or due to any other reason. Moreover, weapon of offence axe was recovered from the accused and he has stated in his extra judicial confession that he has assaulted his brother thrice. In the post-mortem report, three lacerated wounds were found on the body of the deceased. Therefore, the extra judicial confession stands corroborated by the medical evidence also.

The accused assaulted the deceased with axe, which is a deadly weapon, on the vital part of the body as a result of which right clavicle bone was fractured and the doctor opined that the deceased died on account of excessive bleeding through the neck which caused hypovolumic shock and cerebral anoxia.

In view of the above discussion, we are of the considered opinion that there is no illegality or infirmity in the judgment of the trial Court, same is based on legal evidence and this appeal has no merit, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Soma

YOGENDRA SINGH KANWAR
Digitally signed by YOGENDRA SINGH KANWAR
Date: 2025.02.06 11:17:01 +0530